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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: May 05, 2015.

+ ITA 212/2013

+ ITA 221/2013

COMMISSIONER OF INCOME TAX CENTRAL –II Appellant
Through: Ms. Suruchi Aggarwal, Sr. Standing
counsel and Mr. Abhishek Sharma, Adv.
versus

M/S NAVBHARAT EXPORT Respondent
Through: Mr. Salil Kapoor, Mr. Vikas Jain and
Mr. Shubham Rastogi, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The Revenue appeals to this Court under Section 260-A of Income Tax Act, 1961 (hereinafter referred to as “the Act”), aggrieved by the order of the Income Tax Appellate Tribunal (hereinafter referred to as “the ITAT”) dated 31.01.2011, so far as it relates to the dismissal of its appeal and correspondingly the relief granted to the assessee for Assessment Year (AY) 2003-04. Assessments for four years 2002-03 to 2005-06 were made on 29.12.2006 under Section 153A pursuant to a search conducted on 07.10.2004. The Revenue urges that the ITAT fell into error on the following questions:-

- (i) Disallowance of expenses in the profit & loss account, specifically with respect to transport expenses claimed – only ₹3,38,184 /- out of the total claim of ₹36,01,764/-, sought to be added was actually allowed by the Assessing Officer (AO);
- (ii) Deletion of findings with respect to the error in rejection of books and the imposition of 12% GP rate by the AO on account of absence of stock register and other alleged irregularities; and
- (iii) Direction to cancel the addition on account of notional income worked out by the AO.

2. The assessee at the relevant time, used to procure and restore rice after due processing. In the course of such procurement, it was contended to retain gunny bags supplied by the Food Corporation of India (FCI) and deal with them. After the search and during the assessment proceedings, the assessee had surrendered a sum of ₹1.75 Crores. Apparently, in the course of search, some excess stocks were found. On this basis as well as on an observation of the materials on record, the AO rejected the books of account. In doing so, he was influenced by the following considerations:-

- (a) Absence of stock register;
- (b) Irregularity or failure to disclose the receipts and transactions pertaining to the gunny bags (“bardana”);
- (c) The excess stock found in the premises; and
- (d) A portion of the transport expenses were found to have been transacted in cash with no supporting evidence.

3. The assessee appealed to the Commissioner of Income Tax (Appeals) [hereinafter referred to as “the CIT(A)”] contending that the AO’s rejecting the books of account and imposing a gross profit margin of 12% was

arbitrary. In doing so, the assessee attacked the AO's approach stating that so far as the transport expenses were concerned, of the total expenses, the entire expenses of more than ₹7.21 crores had been substantially accepted of which the details and records in respect of ₹36 Lacs odd was not available. This constituted just about 5.1% of the total transport expenses. The AO had rejected the said claim of expenditure of ₹36 Lacs and instead worked out 1.75% of the total expenditure, amounting to ₹36,01,764/-, as the admissible figure. The CIT(A) upheld the rejection of books of account but granted limited relief to the extent that the GP rate was reduced from 12% to 11.6%.

4. Aggrieved by the order of the CIT(A), both the Revenue and the assessee carried the matter in appeal. The ITAT by impugned order, analysed the entirety of the material and evidence on record for all the years i.e. AY 2002-03 to 2005-06. It held that the reason for rejection of the books of account was not sound given that the assessee was maintaining the consistent accounting method which had been accepted during all previous years. So far as the irregularities with respect to "bardana" was concerned, the ITAT held as follows:-

"12. ...First objection given by the Assessing Officer for doubting book results of the assessee is that it has not shown sale of bardana (gunny bags). The assessee has demonstrated that this observation is factually incorrect. The learned counsel for the assessee during the course of hearing drew our attention towards the balance sheet and the accounts and shown us the opening stock, purchases and sale of bardana..."

5. In view of these findings which are entirely based on fact, this Court is of the opinion that unless the Revenue points out something

fundamentally wrong or unreasonable in the ITAT's approach, the question urged by it with regard to addition on this score, is inadmissible.

6. In dealing with the rejection of the cash transactions towards transport expenditure, the ITAT reasoned as follows:-

“12...The second objection pointed out by the Assessing Officer is that assessee has carried out cash transaction. These cash transactions relate to payment of freight charges to the transporter. We find from the record that assessee had incurred a sum of ₹7,21,16,088/- towards the freight. Out of this huge amount, it has incurred expenses of ₹36,84,500/- in cash. According to it, some time petty transports emphasized for making the payment in cash. In our opinion, this is not such a factor which may prevent the Assessing Officer to compute the true income of the assessee from the accounts...”

This Court is of the opinion that the ITAT's reasoning is sound and does not call for interference. The extent of disallowance made towards transportation expenses claimed was ₹36,01,764/- which was concededly in cash. Counsel for the Revenue points out that lower questionnaire was sought given to the assessee on 05.04.2006. The reply on this score belatedly on 04.05.2006 did not contain any particular. Be that as the case may be, at the same time, this Court is of the opinion that considering the totality of the expenditure which was about ₹7,21,16,088/-, the cash expenditure of ₹36,84,500/-, could not be said to be of such magnitude as to have led to the startling result of rejecting the entire books of account. Furthermore, the AO does not indicate any reason why he accepted 1.75% of the entire transaction as permissible cash transportation expenditure. We, therefore, agree with the findings of the ITAT and held that the expense

claimed for transportation could not have been a valid ground for rejecting the books of account.

7. The ITAT noted very importantly that the AO's observation with regard to the assessee not maintaining any stock register was not correct.

The AO, in fact, does not appear to have rejected any results for AY 2002-

03. The ITAT further held:-

“12...The assessee in its audit report specifically alleged that it is maintaining stock register. The assessee has been lifting the rice from FCI godown and thereafter it is exporting. All the details of purchase, sales and exports are being maintained and shown to the Assessing Officer. In spite of that, in a flimsy way, Assessing Officer had made the above remark. The next objection pointed out by the Assessing Officer is that yield shown by the assessee is not reliable. The criteria for making comparison of yield by the Assessing Officer is not discernible. He observed that a loose paper was found at the premises of erstwhile partner and the yield computed on that loose paper did not match with the ultimate yield shown by the assessee. It is not coming out on the record that how that loose paper is relevant for working out the yield. The yield of the assessee ought to be verified from the factor, what type of rice it had purchased, how it has processed, what type of machinery it has used, those percentage ought to be compared with some similarly situated assessee or with the result of other years. No such steps have been taken by the Assessing Officer. He merely assigned one reason for the sake of giving reasons.

13. Assessing Officer has estimated the GP at 12%. In assessment year 2005-06, assessee itself has shown the GP at 13.14%. In that year, he estimated the GP at 13.5%. It gives an impression that Assessing Officer instead of finding out actual defects in the books of account of the assessee, he wants to reject the result whatever may be the reasons. Taking into consideration the alleged defects pointed out by the Assessing Officer as well as the explanations of the assessee, we find that

Assessing Officer has made a reference to lame excuses for disbelieving the book results of the assessee, Learned CIT(Appeals) though agreed with the contention of the assessee that objections pointed out by the Assessing Officer have been refuted by it, still uphold the rejections of the book results, only on the ground that excess stock was declared during the course of search. As observed earlier, this may be one corroborative factor for doubting the accounts of the assessee, but it cannot be a sole criteria. More so, on the similar books of account and details, Assessing Officer could not find any fault in assessment year 2002-03 and in earlier years. Thus, taking into consideration all these factors we are of the opinion that Learned CIT(Appeals) has erred in upholding the rejection of book results. Assessing Officer is unable to point out serious lapse in the accounts maintained by the assessee which can enable him to deduce the true income. We allow the ground of appeal raised by the assessee in all the three years and set aside the finding of the learned revenue authorities. The income of the assessee is to be computed on the basis of books of account maintained by it and the GP addition made by the Assessing Officer in all the three assessment years is deleted.”

8. The above findings are again a finding of fact. Revenue's appeal does not in any manner reflect how these findings are unreasonable or unsupported by the materials on record. Consequently, no question of law arises for consideration, as to the rejection of the books of account.

9. In view of the above conclusion, the further finding of the ITAT that the imposing of GP rate of 12% - later reduced to 11.6% was entirely unwarranted. This finding, of course, cannot be disturbed in view of the fact that each of the reasons which impelled the AO to reject the books of account, has been upheld.

10. As far as the interest of ₹50,200/-, attributed as a notional interest accruing from other sources is concerned, this Court agrees with the findings

of the ITAT that the entire basis of this addition was hypothetical and not based upon any material evidence except the cheques found in the premises during the search. The assessee's explanation was that these amounts had been returned. So far as the addition on account of interest which ought to have accrued is concerned, both the CIT(A) and ITAT were in unanimity in holding that such additions could not have been made. We also noticed that the ITAT based its decision on the judgment of Supreme Court in *Commissioner of Income Tax v. Shoorji Vallabhdas and Co.* (1962) 46 ITR 144 (SC). Having regard to these facts, this Court is of the opinion that there was no "real income" in the facts and circumstances of this case. In view of the concurrent findings, the Court will not interfere in this aspect.

11. For the foregoing reasons, no substantial question of law arises. The appeal is dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

MAY 05, 2015

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